



SBC Wisconsin
722 N. Broadway
Floor 13
Milwaukee, WI 53202

December 15, 2005

Ms. Christy Zehner
Secretary to the Commission
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, Wisconsin 53707-7854

Re: Application for the Approval of a Conforming Post TRO Remand Amendment to the Interconnection Agreement between Wisconsin Bell, Inc., d/b/a SBC Wisconsin¹, and Navigator Telecommunications, LLC.

Dear Ms. Zehner:

Wisconsin Bell, Inc., d/b/a SBC Wisconsin, and Navigator Telecommunications, LLC hereby request approval, pursuant to 47 U.S.C. 252, of this Conforming Post TRO Remand Amendment to the Interconnection Agreement negotiated between Navigator Telecommunications, LLC and Wisconsin Bell, Inc., d/b/a SBC Wisconsin.

I have been authorized by Navigator Telecommunications, LLC to submit for Commission approval, pursuant to 47 U.S.C. s 252(e), the enclosed agreement.

Navigator Telecommunications, LLC
Michael McAlister
General Counsel
8525 Riverwood Park Drive
North Little Rock, AR 72113
Tel: 501-954-4000
Fax: 501-954-4002

Very Truly Yours,

Joan Schoenberger

¹ Wisconsin Bell, Inc. ("Wisconsin Bell"), a Wisconsin corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin. Wisconsin Bell offers telecommunications services and operates under the names "SBC Wisconsin" and "SBC Ameritech Wisconsin", pursuant to assumed name filings with the State of Wisconsin. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc.

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BY AND BETWEEN
WISCONSIN BELL, INC. d/b/a SBC WISCONSIN
AND
NAVIGATOR TELECOMMUNICATIONS, LLC**

WHEREAS, the Federal Communications Commission ("FCC") released on August 21, 2003 a "Report and Order on Remand and Further Notice of Proposed Rulemaking" in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (as corrected by the Errata, 18 FCC Rcd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, by its *TRO*, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"), and therefore, Wisconsin Bell, Inc. d/b/a SBC Wisconsin ("SBC Wisconsin") is no longer legally obligated to provide those network elements on an unbundled basis to Navigator Telecommunications, LLC ("CLEC") under federal law; and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II") on March 2, 2004 and its associated mandate on June 16, 2004; and

WHEREAS, the *USTA II* decision vacated certain of the FCC rules and parts of the *TRO* requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act; and

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules,¹ on February 4, 2005 ("TRO Remand Order"), holding that an incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers (CLECs) for the purpose of serving end-user customers using DSO capacity loops ("mass market unbundled local circuit switching" or "Mass Market ULS"), and holding that an incumbent LEC is not required to provide access to certain high-capacity loop and certain dedicated transport on an unbundled basis to requesting telecommunications carriers (CLECs);

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreements set forth in the Agreement and in this Amendment, the Agreement is hereby amended to ensure that the terms and conditions of the Agreement related to specific network elements made available hereunder on an unbundled basis under Sections 251(c)(3) and (d)(2) are conformed so as to be consistent with applicable federal law:

1. **TRO-Declassified Elements.** Pursuant to the *TRO*, nothing in the Agreement requires SBC Wisconsin to provide to CLEC any of the following items, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality:
 - (i) entrance facilities;
 - (ii) DSO or OCn level dedicated transport;
 - (iii) enterprise market (DS1 and above) local switching (defined as (a) all line-side and trunk-side facilities as defined in the *TRO*, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and (b) all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions);
 - (iv) OCn loops;
 - (v) the feeder portion of the loop;

¹ Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

- (vi) line sharing;
 - (vii) any call-related database, other than the 911 and E911 databases, to the extent not provided in conjunction with unbundled local switching;
 - (viii) SS7 signaling to the extent not provided in conjunction with unbundled local switching;
 - (ix) packet switching, including routers and DSLAMs;
 - (x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47 CFR 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier (“DLC”) systems or equipment used to provide passive optical networking (“PON”) capabilities; and
 - (xi) fiber-to-the-home loops and fiber-to-the-curb loops (as defined in 47 C.F.R. § 51.319(a)(3)) (“FTTH Loops” and “FTTC Loops”), except to the extent that SBC Wisconsin has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case SBC Wisconsin will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH Loop or FTTC Loop on an unbundled basis to the extent required by terms and conditions in the Agreement.
2. **TRO Remand-Declassified Elements - Mass Market Unbundled Local Switching and UNE-P.** Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, whether alone, in combination (as in with “UNE-P”), or otherwise. For purposes of this Section, “Mass Market” shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or “Enterprise” level.)
- 2.1 **Transitional Provision of Embedded Base.** As to each Mass Market ULS or Mass Market UNE-P, after March 11, 2005, pursuant to Rules 51.319(d), as set forth in the TRO Remand Order, SBC Wisconsin shall continue to provide access to CLEC’s embedded base of Mass Market ULS Element or Mass Market UNE-P (i.e. only Mass Market ULS Elements or Mass Market UNE-P ordered by CLEC *before* March 11, 2005), in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement, for a transitional period of time, ending upon the earlier of:
- (a) CLEC’s disconnection or other discontinuance [except Suspend/Restore] of use of one or more of the Mass Market ULS Element(s) or Mass Market UNE-P;
 - (b) CLEC’s transition of a Mass Market ULS Element(s) or Mass Market UNE-P to an alternative arrangement; or
 - (c) March 11, 2006.
- SBC Wisconsin’s transitional provision of embedded base Mass Market ULS or Mass Market UNE-P under this Section 2 shall be on an “as is” basis, except that CLEC may continue to submit orders to add, change or delete features on the embedded base Mass Market ULS or Mass Market UNE-P, or may re-configure to permit or eliminate line splitting. Upon the earlier of the above three events occurring, as applicable, SBC Wisconsin may, without further notice or liability, cease providing the Mass Market ULS Element(s) or Mass Market UNE-P.
- 2.1.1 Concurrently with its provision of embedded base Mass Market ULS or Mass Market UNE-P pursuant to this Amendment, and subject to this Section 2, and subject to the conditions set forth in Section 2.1.1.1 below, SBC Wisconsin shall also continue to provide access to call-related databases, SS7 call setup, ULS shared transport and other switch-based features in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement, and only to the extent such items were already being provided before March 11, 2005, in conjunction with the embedded base Mass Market ULS or Mass Market UNE-P.
- 2.1.1.1 The Agreement must contain the appropriate related terms and conditions, including pricing; and the features must be “loaded” and “activated” in the switch.
- 2.2 **Transitional Pricing for Embedded Base.** Notwithstanding anything in the Agreement, during the applicable transitional period of time, the price for the embedded base Mass Market ULS or Mass Market UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS/UNE-P on June

15, 2004 plus one dollar, or (B) the rate the applicable state commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS/UNE-P, plus one dollar. CLEC shall be fully liable to SBC Wisconsin to pay such pricing under the Agreement, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

- i. Regardless of the execution or effective date of this Amendment or the underlying Agreement, CLEC will be liable to pay the Transitional Pricing for Mass Market ULS Element(s) and Mass Market UNE-P, beginning March 11, 2005.
- ii. CLEC shall be fully liable to SBC Wisconsin to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.

2.3 End of Transitional Period. CLEC will complete the transition of embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transitional period of time defined in the TRO Remand Order (March 11, 2006).

2.3.1 To the extent that there are CLEC embedded base Mass Market ULS or UNE-P [and related items, such as those referenced in Section 2.1.1, above] in place on March 11, 2006, SBC Wisconsin, without further notice or liability, will re-price such arrangements to a market-based rate.

3. **TRO Remand-Declassified - Loop-Transport Elements.** Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain the following new unbundled high-capacity loop and dedicated transport elements, either alone or in combination:

Dark Fiber Loops;

DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable;

DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; or

Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv).

The above-listed element(s) are referred to herein as the "Affected Loop-Transport Element(s)."

3.1 **Transitional Provision of Embedded Base.** As to each Affected Loop-Transport Element, after March 11, 2005, pursuant to Rules 51.319(a) and (e), as set forth in the TRO Remand Order, SBC Wisconsin shall continue to provide access to CLEC's embedded base of Affected Loop-Transport Element(s) (i.e. only Affected Loop-Transport Elements ordered by CLEC *before* March 11, 2005), in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement, for a transitional period of time, ending upon the earlier of:

- (a) CLEC's disconnection or other discontinuance of use of one or more of the Affected Element(s);
- (b) CLEC's transition of an Affected Element(s) to an alternative arrangement; or
- (c) March 11, 2006 (for Affected DS1 and DS3 Loops and Transport) or September 11, 2006 (for Dark Fiber Loops and Affected Dark Fiber Transport).

SBC Wisconsin's transitional provision of embedded base Affected Element(s) under this Section 3.1 shall be on an "as is" basis. Upon the earlier of the above three events occurring, as applicable, SBC Wisconsin may, without further notice or liability, cease providing the Affected Element(s).

3.2 **Transitional Pricing for Embedded Base.** Notwithstanding anything in the Agreement, during the applicable transitional period of time, the price for the embedded base Affected Loop-Transport Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Loop-Transport Element(s) as of June 15, 2004 *plus 15%* or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Loop-Transport Element(s), *plus 15%*.

- 3.2.1 Regardless of the execution or effective date of this Amendment or the underlying Agreement, CLEC will be liable to pay the Transitional Pricing for all Affected Loop-Transport Element(s), beginning March 11, 2005.
- 3.2.2 CLEC shall be fully liable to SBC Wisconsin to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.
- 3.3 **End of Transitional Period.** CLEC will complete the transition of embedded base Affected Loop-Transport Elements to an alternative arrangement by the end of the transitional period of time defined in the TRO Remand Order (as set forth in Sections 3.3.1 and 3.3.2, below). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to SBC Wisconsin by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.
- 3.3.1 For Dark Fiber Loops and Affected Dark Fiber Transport, the transition period shall end on September 11, 2006.
- 3.3.2 For Affected DS1 and DS3 Loops and Transport, the transition period shall end on March 11, 2006.
- 3.3.3 To the extent that there are CLEC embedded base Affected DS1 and DS3 Loops or Transport Elements in place on March 11, 2006, as applicable, SBC Wisconsin, without further notice or liability, will convert them to a Special Access month-to-month service under the applicable access tariffs.
4. **Non-Impaired Wire Center Criteria and Related Processes.**
- 4.1 SBC Wisconsin has designated and posted to CLEC Online the wire centers where it contends the thresholds for DS1 and DS3 Unbundled High-Capacity Loops as defined pursuant to Rule 51.319(a)(4) and Rule 51.319(a)(5) and for Tier 1 and Tier 2 Non-Impaired Wire Centers as defined pursuant to Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii) have been met. SBC Wisconsin's designations shall be treated as controlling (even if CLEC believes the list is inaccurate) for purposes of transition and ordering unless CLEC provides a self-certification as outlined below. Until CLEC provides a self-certification for High-Capacity Loops and/or Transport for such wire center designations, CLEC will not submit High Capacity Loop and/or Transport orders based on the wire center designation, and if no self-certification is provided will transition its Embedded Base of DS1 and DS3 Loop and Transport arrangements affected by the designation by disconnecting or transitioning to an alternate facility or arrangement, if available, by March 11, 2006. CLEC will transition any affected Dark Fiber Transport arrangements affected by the wire center designations by disconnecting or transitioning to an alternate facility or arrangement, if available, by September 11, 2006. SBC Wisconsin will update the CLEC Online posted list and will advise CLECs of such posting via Accessible Letter, which term for the purposes of this Section 4.0 of this Amendment shall be deemed to mean an Accessible Letter issued after the effective date of this Amendment, as set forth in this Section 4.0 of this Amendment.
- If the Commission has not previously determined, in any proceeding, that a wire center is properly designated as a wire center meeting the thresholds set forth pursuant to Rule 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii), then, prior to submitting an order for an unbundled DS1/DS3 High-Capacity Loop, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangement, CLEC shall perform a reasonably diligent inquiry to determine that, to the best of CLEC's knowledge, whether the wire center meets the non-impairment thresholds as set forth pursuant to Rules 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii). If, based on its reasonably diligent inquiry, the CLEC disputes the SBC Wisconsin wire center non-impairment designation, the CLEC will provide a self-certification to SBC Wisconsin identifying the wire center(s) for which it is self-certifying. In performing its inquiry, CLEC shall not be required to consider any lists of non-impaired Wire Centers compiled by SBC Wisconsin as creating a presumption that a Wire Center is not impaired. CLEC can send a letter to SBC Wisconsin claiming Self Certification or CLEC may elect to self-certify using a written or electronic notification sent to SBC Wisconsin. If CLEC makes such a self-certification, and CLEC is otherwise entitled to the ordered element under the Agreement, SBC Wisconsin shall provision the

requested facilities in accordance with CLEC's order and within SBC Wisconsin's standard ordering interval applicable to such facilities. If SBC Wisconsin in error rejects CLEC orders, where CLEC has provided self certification in accordance with this Section 4.0 of this Amendment, SBC Wisconsin will modify its systems to accept such orders within 5 business hours of CLEC notification to its account manager. CLEC may not submit a self-certification for a wire center after the transition period for the DS1/DS3 Loops and/or DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport impacted by the designation of the wire center has passed.

4.1.1 The parties recognize that wire centers that SBC Wisconsin had not designated as meeting the FCC's non-impairment thresholds as of March 11, 2005, may meet those thresholds in the future. In the event that a wire center that is not currently designated as meeting one or more of the FCC's non-impairment thresholds, meets one or more of these thresholds at a later date, SBC Wisconsin may add the wire center to the list of designated wire centers and the Parties will use the following process:

4.1.1.1 SBC Wisconsin may update the wire center list as changes occur.

4.1.1.2 To designate a wire center that had previously not met one or more of the FCC's impairment thresholds but subsequently does so, SBC Wisconsin will provide notification to CLEC via Accessible Letter and by a posting on CLEC Online.

4.1.1.3 SBC Wisconsin will continue to accept CLEC orders for impacted DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport without requiring CLEC self-certification for 30 calendar days after the date the Accessible Letter is issued.

4.1.1.4 In the event the CLEC disagrees with SBC Wisconsin's determination and CLEC has 60 calendar days from the issuance of the Accessible Letter to dispute SBC Wisconsin's determination regarding the wire center by providing a self-certification to SBC Wisconsin.

4.1.1.5 If the CLEC does not use the self-certification process described in this Section 4.0 of this Amendment to self-certify against SBC Wisconsin's wire center designation within 60 calendar days of the issuance of the Accessible Letter, the parties must comply with the Applicable Transitional Period as follows: transition all circuits that have been declassified by the wire center designation(s) within 30 days ending on the 90th day after the issuance of the Accessible Letter providing the wire center designation of non-impairment or the end of the applicable transition period described in Section 3.2 of this Amendment, whichever is later. For the Applicable Transitional Period, no additional notification will be required. CLEC may not obtain new DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport in wire centers and/or routes where such circuits have been declassified during the applicable transition period.

4.1.1.6 If the CLEC does provide self-certification to dispute SBC Wisconsin's designation determination within 60 calendar days of the issuance of the Accessible Letter, SBC Wisconsin may dispute CLEC's self-certification as described in Sections 4.1.3 and 4.1.4 of this Amendment and SBC Wisconsin will accept and provision the applicable loop and transport orders for the CLEC providing the self certification during a dispute resolution process.

4.1.1.7 During the applicable transition period, the rates paid will be the rates in effect at the time of the non-impairment designations plus 15%.

4.1.2 If the Commission has previously determined, in any proceeding, even if CLEC was not a party to that proceeding where appropriate notice has been provided to the CLEC and where CLEC has the opportunity to participate, that a wire center is properly designated as a wire center meeting the thresholds set forth pursuant to Rule 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii), then CLEC shall not request DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements declassified by the non-impairment status

of the wire center in such wire center. If a CLEC withdraws its self-certification after a dispute has been filed with the Commission, but before the Commission has made a determination regarding the wire center designation, the wire center designation(s) that were the subject of the dispute will be treated as though the Commission approved SBC Wisconsin's designations.

- 4.1.3 In the state of Wisconsin, if it desires to do so, SBC Wisconsin can dispute the self-certification and associated CLEC orders for facilities pursuant to the following procedures: SBC Wisconsin will notify the CLEC of its intent to dispute the CLEC's self-certification within 30 days of the CLEC's self-certification or within 30 days of the effective date of this amendment, whichever is later. SBC Wisconsin will file the dispute for resolution with the state Commission within 60 days of the CLEC's self-certification or within 60 days of the effective date of this amendment, whichever is later. SBC Wisconsin will notify CLECs of the filing of such a dispute via Accessible Letter. If the self-certification dispute is filed with the state Commission for resolution, the Parties will not oppose requests for intervention by other CLECs if such request is related to the disputed wire center designation(s). The parties agree to urge the state Commission to adopt a case schedule resulting in the prompt resolution of the dispute. SBC Wisconsin's failure to file a timely challenge, i.e., within 60 days of the CLEC's self-certification or within 60 days of the effective date of this Amendment, whichever is later, to any CLEC's self certification for a given wire center shall be deemed a waiver by SBC Wisconsin of its rights to challenge any subsequent self certification for the affected wire center except as provided below. SBC Wisconsin shall promptly notify CLEC of any time where SBC Wisconsin has waived its ability to challenge a self-certification as to any wire center for carrier. SBC Wisconsin may challenge future CLEC self-certifications pertaining to the wire center if the underlying facts pertaining to the designation of non-impairment have changed, in which case the Parties will follow the provisions for updating the wire center list outlined in Section 4.1.1 of this Amendment. During the timeframe of any dispute resolution proceeding, SBC Wisconsin shall continue to provide the High-Capacity Loop or Transport facility in question to CLEC at the rates in the Pricing Appendix to the Agreement. If the CLEC withdraws its self-certification, or if the state Commission determines through arbitration or otherwise that CLEC was not entitled to the provisioned DS1/DS3 Loops or DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport under Section 251, the rates paid by CLEC for the affected loop or transport shall be subject to true-up as follows:

- 4.1.3.1 For the affected loop/transport element(s) installed prior to March 11, 2005, if the applicable transition period is within the initial *TRRO* transition period described in Section 3.2 of this Amendment, CLEC will provide true-up based on the FCC transitional rate described in Section 3.2 of this Amendment. The true-up will be calculated using a beginning date that is equal to the latter of March 11, 2005, or, for wire centers designated by SBC Wisconsin after March 11, 2005, thirty days after SBC's notice of non-impairment. The transitional rate will continue to apply until the facility has been transitioned or through the end of the applicable transition period described in Section 3.2 of this Amendment, whichever is earlier. For all other affected loop/transport elements, CLEC will provide true-up to an equivalent special access rate as of the latter of the date billing began for the provisioned element or thirty days after SBC Wisconsin's notice of non-impairment. If no equivalent special access rate exists, true-up will be determined using the transitional rate described in Section 3.2.1 of this Amendment.

- 4.1.4 In the event of a dispute following CLEC's Self-Certification, upon request by the Commission or CLEC, SBC Wisconsin will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, all documentation and all data upon which SBC Wisconsin intends to rely, which will include the detailed business line information for the SBC Wisconsin wire center or centers that are the subject of the dispute.

- 4.2 The provisions of Section 3.2.2 of this Amendment shall apply to the transition of DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements impacted by wire center designation(s). As outlined in Section 3.2.2 of this Amendment, requested transitions of DS1/DS3 High Capacity loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall

be performed in a manner that reasonably minimizes the disruption or degradation to CLEC's customer's service, and all applicable charges shall apply. Cross-connects provided by SBC Wisconsin in conjunction with such Loops and/or Transport shall be billed at applicable wholesale rates (i.e. if conversion is to an access product, they will be charged at applicable access rates). Cross-connects that are not associated with such transitioned DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall not be re-priced.

- 4.3 SBC Wisconsin will process CLEC orders for DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport, or Dark Fiber Transport conversion or disconnection. SBC Wisconsin will not convert or disconnect these services prior to the end of the applicable transitional period unless specifically requested by the CLEC; however, CLEC is responsible for ensuring that it submits timely orders in order to complete the transition by the end of applicable transitional period in an orderly manner.
- 4.4 A building that is served by both an impaired wire center and a non impaired wire center and that is not located in the serving area for the non-impaired wire center will continue to have Affected Elements available from the impaired wire center and support incremental moves, adds, and changes otherwise permitted by the Agreement, as amended
- 4.5 Notwithstanding anything to the contrary in the Agreement, including any amendments to this Agreement, at the end of the Applicable Transitional Period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 3.2.2 of this Amendment above, and if CLEC and SBC Wisconsin have failed to reach agreement under Section 3.2.2.4 of this Amendment above as to a substitute service arrangement or element, then SBC Wisconsin may, at its sole option, disconnect dark fiber element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available at rates applicable to such analogous service or arrangement.
5. Nothing in this Amendment shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law", "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Amendment apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.
6. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.
7. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
8. In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC*, *et. al*, 535 U.S. 467 (2002); *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36) including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004), and the FCC's Biennial Review Proceeding; the FCC's Order on Remand (FCC 04-290), WC Docket No. 04-312 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"); the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Inter-carrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including this and any other amendments to the Agreement), SBC Wisconsin shall have no obligation to provide UNEs,

combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC Wisconsin has adopted the FCC ISP terminating compensation plan ("FCC Plan") in Wisconsin, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC Wisconsin's right to exercise its option at any time to adopt on a date specified by SBC Wisconsin the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

9. This Amendment shall be filed with and is subject to approval by the Public Service Commission of Wisconsin and shall become effective ten (10) days following approval by such Commission.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this 14th day of December, 2005, by the Parties, signing by and through their duly authorized representatives

Navigator Telecommunications, LLC


By: 

Name: Kenrick LeDoux
(Print or Type)

Title: VP Engineering + CTO
(Print or Type)

Date: 12/9/05

Wisconsin Bell, Inc. d/b/a SBC Wisconsin by AT&T
Operations, Inc., its authorized agent

By: 

Name: Mike Auinbauh
(Print or Type)

Title: AVP-Local Interconnection Marketing

Date: DEC 14 2005

FACILITIES-BASED OCN # 2317

ACNA NVG